

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

The Trustees of the Sheet Metal Local
#10 Control Board Trust Fund,

Plaintiffs,

Civ. No. 08-4752 (RHK/JJK)
ORDER

v.

Genz-Ryan Plumbing and Heating Co.,

Defendant.

On July 17, 2009, this Court determined that Genz-Ryan Plumbing and Heating Co. (“Genz-Ryan”) violated the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1145, by failing to make fringe-benefit contributions required under a collective bargaining agreement. (Doc. No. 50.) This matter is now before the Court upon Genz-Ryan’s Motion to Certify Order for Interlocutory Appeal and for Stay of Proceedings Pending Appeal pursuant to 28 U.S.C. § 1292(b).

Certification under Section 1292(b) is appropriate when an “order involves a controlling question of law as to which there is a substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation.” 28 U.S.C. § 1292(b). However, certification should only be granted in those “exceptional cases where a decision on appeal may avoid protracted and expensive litigation.” White v. Nix, 43 F.3d 374, 376 (8th Cir. 1994) (internal quotation marks and citation omitted). In this case, the only issue remaining for trial is

the amount of delinquent fringe-benefit contributions due and owing under the collective bargaining agreement. A bench trial is on the Court's civil trial calendar for September 1, 2009, and in the Court's estimation, will take no more than two to three days to complete. Accordingly, certification would not "materially advance the ultimate termination of the litigation," 28 U.S.C. § 1292(b), and the Motion to Certify Order for Interlocutory Appeal and for Stay of Proceedings Pending Appeal (Doc. No. 51) will be **DENIED**.

Dated: August 3, 2009

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge